

CHIPPEWAS OF THE THAMES MATRIMONIAL REAL PROPERTY LAW

PREAMBLE

WHEREAS the Chippewas of the Thames First Nation, as part of the Anishinabeg Nation, maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and rich culture within a defined territory that pre-dates the establishment of Canada and our Anishinabeg Nation continues to exist;

WHEREAS our Anishinabeg Nation has a sacred duty to ensure the well being of our people to the Seventh (7th) Generation and it is incumbent upon our Nation's leadership to ensure this sacred duty is honoured;

WHEREAS the special and historic relationship between the Anishinabeg and the Crown is evidenced by, among other things, the Royal Proclamation of 1763, Treaty 3, as well as the Constitution of Canada;

WHEREAS our existing Aboriginal and Treaty rights are recognized and affirmed under section 35 of the *Constitution Act, 1982*;

WHEREAS the inherent right of Anishinabeg self-government is an existing Aboriginal right under section 35 of the *Constitution Act, 1982*;

WHEREAS we have the right to govern ourselves in relation to matters that are integral to our unique culture, identity, traditions, language and institutions and with respect to our special relationship to our land and resources;

WHEREAS our Anishinabeg Nation, as an aspect of our inherent right of self-government, has the jurisdiction to address real property issues such as matrimonial property upon the breakdown of marriage and common law relationships, and the occupation of the matrimonial home, and this inherent right has not been extinguished;

WHEREAS our self-government rights, including our right to adopt this Law, are confirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, and in particular Articles 3, 4, 5, 8(1) and 34.

WHEREAS we encourage our members to resolve any matrimonial property issues internally, with the assistance of family or other community members, or with the assistance of a Sharing Circle or Mediation through the Anishinabek Nation Tribunal and Commission, and to only turn to the Dispute Resolution Panel of the Anishinabek Nation Tribunal and Commission as a last resort;

WHEREAS it is essential to the health and survival of our First Nation that we maintain our community and existing lands, and that COTTFN members be able to live in the COTTFN community if they wish to do so;

WHEREAS our First Nation wishes to see matrimonial real property disputes resolved in a way that, first, is in keeping with the best interests of their children, second, does not jeopardize the ability of our Nation's members to reside on reserve and hold real property on reserve, and third, is fair to both spouses; and

WHEREAS this Law will apply in conjunction with applicable federal, provincial and Anishinabeg laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

NOW THEREFORE the Chippewas of the Thames First Nation hereby enacts the following Law:

A. INTERPRETATION AND APPLICATION

1.1 This Law may be cited as the "COTTFN Matrimonial Real Property Law".

2.1 For the purposes of this Law, the following definitions shall apply:

"Child" means a person who is

- (a) the offspring of at least one Spouse, or
- (b) adopted, under Canadian law or Aboriginal custom, by at least one Spouse

and it includes "children";

"COTTFN Land" means the COTTFN Indian Reserve, any future additions to the COTTFN Nation's reserves;

"Council" means the Chief and Council of COTTFN Nation;

"Court" means the Family Court of the Superior Court of Justice or any Ontario court(s) that replaces it as the forum for adjudicating family law disputes in London, Ontario;

“Dispute Resolution Panel” means the adjudicative body of the Anishinabek Nation Tribunal and Commission as established under the Anishinabek Nation Tribunal & Commission Policy for the First Nations of the Anishinabek Nation (approved by the Anishinabek Nation Chiefs in Assembly Grand Council Resolution No. 2008/23)

“Domestic Contract” means:

- (a) an agreement between Spouses who are married to each other, entered into when they were married or when they intended to marry, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Matrimonial Property;
- (b) an agreement between Spouses who are living together in a marriage-like relationship, entered into during the relationship or in contemplation of the relationship, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the relationship or on separation, with respect to the possession or division of Matrimonial Property; or
- (c) a separation agreement between Spouses who are living separate and apart, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations on separation with respect to the possession or division of Matrimonial Property.

“Family Violence” includes the following actions by a person towards a Spouse, a Child, or anyone residing with a Spouse or a Child (in this definition, a “family member”):

- (a) causing or attempting to cause, physical or sexual abuse including forced confinement or deprivation of the necessities of life, and
- (b) psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour, including through internet or phone communication, which may include, but is not limited to, the following behaviours by the person towards the family member:
 - (i) intimidation, harassment or threats, including threats to harm the family member, other persons, pets or property to obtain the compliance of the family member,
 - (ii) unreasonable demands to know where or with whom the family member is or restrictions on the family member’s activities or contact with friends or family members,

- (iii) financial abuse, including unreasonable prevention of the family member from access to or knowledge about family income,
- (iv) stalking or following the family member, or
- (v) intentional damage to property,

but does not include acts of self-protection, or protection of another person, if the force does not exceed what is reasonable in the circumstances.

“Interest in COTTFN Land” means any certificate of possession, allotment, lease, permit or any other equivalent instrument, but does not include rental agreements for COTTFN Nation property. For greater certainty, where there is a Matrimonial Home affixed to COTTFN Land that is the subject of an Interest in COTTFN Land, the Interest includes both the land and the Matrimonial Home;

“Matrimonial Home” means a dwelling that is ordinarily used for a family purpose and is:

- (a) owned exclusively by one or both Spouses, and
- (b) affixed to COTTFN Land;

“Matrimonial Property” means

- (a) an Interest in COTTFN Land that is held by one or both Spouses and that includes a Matrimonial Home, regardless of when it was acquired or whether it was received by way of gift or inheritance;
- (b) an Interest in COTTFN Land that does not include a Matrimonial Home, is held by one or both Spouses, was acquired during the spousal relationship, and that was not received by way of gift or inheritance to only one Spouse;
- (c) where the Interest in COTTFN Land that does not include a Matrimonial Home is held by one or both Spouses and was acquired prior to the spousal relationship or was received during the relationship by way of gift or inheritance to only one Spouse, the share of the Interest that is proportionate to any increased value in the Interest during the course of the relationship;

“Member” means a person whose name appears or is entitled to appear on the COTTFN Indian Band membership list or, if the COTTFN Nation develops membership rules, any person who holds COTTFN membership under those rules or is eligible for membership and has not formally opted against being a member of the COTTFN Nation;

“Spouse” means a person who:

- (a) is married to another person, including through an Aboriginal customary marriage;
- (b) is living with another person in a marriage-like relationship (i.e. “Common Law Spouses”); or
- (c) is a former Spouse.

- 3.1 This Law applies only to COTTFN Land and not the remainder of COTTFN’s territory.
- 3.2 With the exception of Part F (Emergency Protection Orders), this Law only applies where at least one Spouse is a Member.
- 3.3 For greater certainty,
 - (a) a Spouse cannot commence legal proceedings after the death of the other Spouse under this Law, and his or her rights in relation to an Interest in COTTFN Land or a Matrimonial Home will instead be determined by the applicable law governing the estate of the deceased Spouse;
 - (b) where a Spouse dies, the other Spouse may continue any legal proceedings under this Law which were started before the death of that Spouse.
- 3.4 This Law applies in conjunction with federal, provincial and any Anishinabeg family laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

B. DOMESTIC CONTRACTS

- 4.1 Subject to sections 4.2-4.3, as well as Part F (Emergency Protection Orders) a provision in a Domestic Contract that reflects the agreement of the Spouses with respect to an Interest in COTTFN Land or a Matrimonial Home is valid, binding, and enforceable by the Dispute Resolution Panel, whether the Spouses entered into the Domestic Contract before or after this Law came into force.
- 4.2 A Domestic Contract may provide an Interest in COTTFN Land, including the right to exclusively occupy a Matrimonial Home, to a Spouse or Child who is not a Member, but such Interest and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it. For greater certainty, a provision creating, or intended to create, any greater interest than a life estate in respect of a non-Member is void.

- 4.3 Subject to this Law, the Dispute Resolution Panel may, on application by a Spouse, set aside a Domestic Contract or any provision therein concerning an Interest in COTTFN Land or a Matrimonial Home upon making a determination that:
- (a) a Spouse failed to disclose to the applicant Spouse any material information in respect of his or her Interests in COTTFN Land or a Matrimonial Home;
 - (b) the applicant Spouse did not understand the nature or consequences of the Domestic Contract or provision; or
 - (c) the Domestic Contract or provision is unconscionable, was entered into under duress, or on the basis of undue influence or fraud.
- 4.4 Subject to section 4.5, section 4.3 only applies to
- (a) married Spouses;
 - (b) Common Law Spouses;
 - (c) formerly married Spouses who have been divorced for less than two years; and
 - (d) former Common Law Spouses who have been living separate and apart for less than two years.
- 4.5 Where the time limit described in section 4.4 has expired
- (a) the formerly married Spouse or former Common Law Spouse may apply to the Dispute Resolution Panel for permission to bring a late claim under section 4.3 on the basis of compelling circumstances;
 - (b) the Dispute Resolution Panel shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other Spouse will suffer from the delay in the application; but
 - (c) in no case shall the Dispute Resolution Panel allow late claims to proceed where the married Spouses have been divorced for over five years or where the former Common Law Spouses have been living separate and apart for over five years.

C. ACCESS TO THE DISPUTE RESOLUTION PANEL

- 5.1 Where Spouses are unable to resolve their differences regarding any matter addressed in this Law (other than matters falling under Part F, Emergency Protection Orders), they may apply to the Dispute Resolution Panel for a resolution of their dispute.

- 5.2 The Dispute Resolution Panel shall adjudicate a dispute under this Law with regard to any decisions and orders rendered by Canadian courts or any Anishinabeg adjudicative body that settle related family law matters for the Spouses, such as divorce, child custody, spousal support, child support, division of personal property or division of real property off-reserve.
- 5.3 Prior to requesting a decision from the Dispute Resolution Panel based on any provision in this Law, a Spouse must serve the respondent Spouse and the Council with a copy of all of the documents that he or she will file with the Dispute Resolution Panel.
- 5.4 At the request of Council, the Dispute Resolution Panel shall, before making its decision, allow the Council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order sought should be made.
- 5.5 When the Dispute Resolution Panel makes any decision or order under this Law, the Spouse in whose favour the decision is made shall promptly provide a copy of the decision or order to the Council.
- 5.6 The COTTFN must not share with any Ontario government official any of the documents that Spouses have submitted in their Dispute Resolution Panel proceedings except where such disclosure is required under a court order or the express wording of a statute.

D. DIVISION OF MATRIMONIAL PROPERTY OR COMPENSATION IN LIEU

- 6.1 Subject to section 6.2, section 6 only applies to
- (a) formerly married Spouses who have been divorced for less than two years; and
 - (b) former Common Law Spouses who cohabited in a marriage-like relationship for at least five years and who have been living separate and apart for less than two years.
- 6.2 Where the time limit described in section 6.1 has expired,
- (a) the formerly married Spouse or former Common Law Spouse may apply to the Dispute Resolution Panel for permission to bring a late claim under section 6 on the basis of compelling circumstances;
 - (b) The Dispute Resolution Panel shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other Spouse will suffer from the delay in the proceeding; but

- (c) In no case will the Dispute Resolution Panel allow late claims to proceed where the married Spouses have been divorced for over five years or where the former Common Law Spouses have been living separate and apart for over five years.

6.3 Subject to this Law, the Dispute Resolution Panel may make determinations concerning interests in and the division of value of Matrimonial Property and may make orders that are necessary, reasonable or ancillary to give effect to the determination, including, but not necessarily limited to:

- (a) a declaration as to whether people are Spouses or former Spouses;
- (b) a declaration as to whether the property at issue is in fact Matrimonial Property;
- (c) a declaration as to the ownership of any Interest in COTTFN Land;
- (d) where both Spouses own the Matrimonial Property, order that one Spouse transfer the Matrimonial Property to the other Spouse exclusively;
- (e) where both Spouses are Members, an order that one Spouse lease an Interest in COTTFN Land or a Matrimonial Home to the other Spouse for a fixed period of time, subject to such conditions as the Dispute Resolution Panel deems just in all the circumstances;
- (f) an order that a Spouse who holds Matrimonial Property make a compensatory payment to the other Spouse to recognize the contribution that the other Spouse made to the acquisition, upkeep and/or improvement of the Matrimonial Property;
- (g) an order that restrains either Spouse from disposing of or transferring their Interest in the Matrimonial Property, either legally or beneficially, pending the resolution of the Spouses' Matrimonial Property dispute; or
- (h) an order that one Spouse pay compensation to the other Spouse if an Interest in COTTFN Land has been disposed of, for the purpose of recognizing the contribution that the other Spouse made to the acquisition, upkeep and/or improvement of the Matrimonial Property;
- (i) any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently depleted Matrimonial Property.

6.4 For greater certainty, the Dispute Resolution Panel may not make any declaration or order providing for the transfer of rights in Matrimonial Property to a non-Member Spouse.

6.5 In making any order under subsection 6.2(d), (f) and (g), (h), and (i) the Dispute Resolution Panel shall begin with the presumption that each Spouse is entitled to an equal share of the value of the Matrimonial Property, and then consider whether this presumption should be varied in light of any of the following factors:

- (a) the date when the Matrimonial Property was acquired or disposed of;
- (b) the duration of the relationship;
- (c) the duration of the period during which the Spouses have lived separate and apart;
- (d) the needs of each Spouse to become or remain economically independent;
- (e) direct or indirect financial contributions of each Spouse toward the acquisition, upkeep, or improvement of the Matrimonial Property;
- (f) the direct or indirect non-financial contribution of each Spouse to the acquisition, upkeep, or improvement of the Matrimonial Property, including through child-rearing responsibilities;
- (g) The amount of any outstanding debt or other liabilities assumed by either Spouse to acquire, maintain, or improve the Matrimonial Property;
- (h) any relevant order or award by a Canadian court or Anishinabek adjudicative body regarding the Spouses' family law matters;
- (i) any other factor that the Dispute Resolution Panel considers relevant to an equitable division of the Matrimonial Property.

6.6 In making any compensation order under section 6.2(f), the Dispute Resolution shall:

- (a) not make any order until it has been provided with at least one valuation of the Matrimonial Property that has been prepared by a qualified appraiser, and which accounts for the limitations on the ownership rights associated with the Matrimonial Property and, in particular, the feasibility of selling or leasing the Matrimonial Property or replacing it with a new Interest in COTTFN Land; and
- (b) not make an order if the Spouse who holds the Interest(s) in COTTFN Land demonstrates that the order is likely to force him or her to sell or otherwise alienate the Matrimonial Property.

6.7 Prior to making an order under 6.2 (d), (g) or (h), the Dispute Resolution Panel may require the Spouses to provide it with at least one valuation of the Matrimonial Property or any component thereof. All appraisals must be prepared by a qualified appraiser and account for the limitations on the ownership rights associated with the Matrimonial Property and, in particular, the feasibility of selling or leasing the Matrimonial Property or replacing it with a new Interest in COTTFN Land.

6.8 Where the interest of a Spouse in Matrimonial Property is held through a corporation, the Dispute Resolution Panel may order that he or she transfer shares in the corporation to the other Spouse.

6.9 Nothing in this Law relieves a party of the requirement to observe the rules and procedures of the Dispute Resolution Panel.

E. MATRIMONIAL HOME

7.1 Sections 7.3-7.7 only apply to

- (a) married Spouses;
- (b) Spouses who have been divorced for less than two years;
- (c) Common Law Spouses who have been cohabiting in a marriage-like relationship for at least five years; and
- (d) Common Law Spouses who cohabited in a marriage-like relationship for at least five years and who have been living separate and apart for less than two years.

7.2 The Dispute Resolution Panel may, on the application of a Spouse, make a declaration as to whether or not the dwelling at issue is a Matrimonial Home.

7.3 Subject to the provisions below, both Spouses have an equal right to occupy the Matrimonial Home.

7.4 No Spouse shall dispose of or encumber an Interest in COTTFN Land that includes a Matrimonial Home unless:

- (a) the other Spouse joins in the instrument or consents to the transaction;
- (b) the other Spouse has released all rights in relation to the Matrimonial Home by Domestic Contract; or
- (c) the Dispute Resolution Panel has authorized the transaction or has released the Interest in COTTFN Land from the application of this section.

7.5 If a Spouse disposes of or encumbers an Interest in COTTFN Land that includes the Matrimonial Home in contravention of section 7.4, the transaction may be set aside on an application to the Dispute Resolution Panel.

7.6 When a person proceeds to realize upon an encumbrance or execution against an Interest in COTTFN Land that includes the Matrimonial Home, the Spouse who has a right of occupation under section 7.3 has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.

- 7.7 The Dispute Resolution Panel may, on the application of a Spouse, authorize a disposition or encumbrance of an Interest in COTTFN Land that includes a Matrimonial Home, provided that such disposition or encumbrance is otherwise authorized under this Law, if the Dispute Resolution Panel finds that the Spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, and the Dispute Resolution Panel may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the Dispute Resolution Panel considers appropriate.
- 7.8 The Dispute Resolution Panel may on application by a Spouse make an exclusive occupation order for the Matrimonial Home or for an Interest in COTTFN Land that includes a Matrimonial Home in favour of that Spouse for a specified period of time, where:
- (a) the applicant Spouse is a Member; or
 - (b) the applicant Spouse is not a Member but is the primary caregiver of a Child, and such an order is in the best interests of the Child.
- 7.9 Prior to making an exclusive occupation application under section 7.8 to the Dispute Resolution Panel, the Spouse must provide notice of his or her application to:
- (a) the respondent Spouse; and
 - (b) any other Member who holds an Interest in the COTTFN Land that is the subject of the application
- unless those people cannot be located, in which case the Spouse will need to provide sufficient evidence on this matter to the Dispute Resolution Panel.
- 7.10 The Spouse against whom an exclusive occupation order is sought and any other Member who holds an interest in the COTTFN Land that is the subject of the application is entitled to make submissions to the Dispute Resolution Panel about the proposed order.
- 7.11 Any person in whose favour or against whom an order is made under section 7.8 may apply to the Dispute Resolution Panel to have the order varied or revoked within the time determined by the Dispute Resolution Panel or, if no time limit is stipulated, at any point while the order remains in force.

- 7.12 A Spouse making an application under section 7.8 must provide the Dispute Resolution Panel with a copy of
- (a) any Domestic Contract between the Spouse and the respondent Spouse; and
 - (b) any order by a court or Anishinabeg adjudicative body concerning custody and/or access for any Child of the Spouse.
- 7.13 An order under 7.8 may specify any terms that the Dispute Resolution Panel considers appropriate, including but not limited to the following:
- (a) the extent to which the contents of the Matrimonial Home are to remain in the Matrimonial Home for the duration of the exclusive occupation order;
 - (b) compensation payable by the Spouse who obtains the exclusive occupation order to the other Spouse for that occupation; and
 - (c) that the order is subject to variation should there be a change in the custody and access provisions applicable to the Child.

F. EMERGENCY PROTECTION ORDERS

- 8.1 Any Spouse residing on COTTFN Land, whether or not he or she is a Member or resides in a Matrimonial Home, may make an *ex parte* application to the Court for an emergency exclusive occupation order of the property where he or she resides.
- 8.2 The Court may grant an order under section 8.1 if it concludes that:
- (a) Family Violence has occurred and
 - (b) the order should be made to help ensure the immediate protection of the Spouse or a Child who resides at the property.
- 8.3 The order under section 8.1 may be for a period of up to 90 days, unless it concerns a rental property and the rental agreement expires in less than 90 days, in which case the order may not extend beyond the term of the rental agreement.
- 8.4 In deciding whether to grant an order under section 8.1, the Court is not bound by the provisions in any Domestic Contract between the Spouses.
- 8.5 An order made under section 8.1 must include a provision directing a peace officer to enforce any provision of the order upon the request of the applicant Spouse or the Council.
- 8.6 The order described in section 8.1 may include any of the following additional provisions:

- (a) a provision requiring the Spouse against whom the order is made and any other person to vacate the property and prohibiting them from returning to the property;
- (b) a provision directing a peace officer to remove the Spouse against whom the order is made and any other person from the property;
- (c) a provision prohibiting any person who is required to vacate the property from attending within a specified distance from the property;
- (d) a provision directing a peace officer to accompany the person who is required to vacate the property to the property in order to supervise the removal of personal belongings;
- (e) any other provision that the Court considers necessary for the immediate protection of the person(s) at risk.

8.7 Any person in whose favour or against whom an order is made under section 8.1 may apply to the Court to have the order varied or revoked within the time determined by the Court or, if no time limit is stipulated, at any point while the order remains in force.

8.8 The Council and, where the order under section 8.1 concerns a property that is not owned by either Spouse, the owner of the Interest in COTTFN Land subject to the order, may apply to the Court at any time to have the order varied or revoked, subject to any restrictions imposed on those parties by the terms of the order.

G. AMENDING PROCEDURES

9.1 Any amendments to this Law shall be made in accordance with the COTTFN's customary procedure for amending laws.

H. GENERAL PROVISIONS

10.1 If any provision or set of provisions in this Law is for any reason held invalid by a decision of the Dispute Resolution Panel, the invalid provision(s) will, wherever possible, be severed from and not affect the remaining provisions of this Law.

10.2 A person commits an offence by refusing or neglecting, without reasonable excuse, to comply with any Dispute Resolution Panel order made against that person under the provisions of this Law.

10.3 A person who commits an offence under section 10.2 of this Law is liable to a fine of up to \$25,000.

- 10.4 The Council or the Spouse of the person alleged to have committed an offence may apply to the Dispute Resolution Panel for a decision under section 10.2 and an order under section 10.3.
- 10.5 A Dispute Resolution Panel order, certified by a proper officer of the Anishinabek Nation Tribunal and Commission, is proof of the order in a prosecution under section 10.4.
- 10.6 A fine payable under this section shall be remitted to COTTFN by the Dispute Resolution Panel, after reasonable Dispute Resolution Panel fees have been deducted by the Anishinabek Nation Tribunal and Commission.
- 10.7 This Law shall come into force on the date it is adopted by Council pursuant to a band council resolution.